

REMARKS

Applicants affirm the provisional election to prosecute the Group I claims made by Steve Gurey in a telephone conference held on August 25, 2003. Thus, claims 1-17 and 28-38 are pending in the present application. In the Office Action, the Examiner objected to the drawings. A proposed drawing amendment is included herein and Applicants will submit revised formal drawings upon receiving an indication from the Examiner that the proposed amendments are acceptable. The Examiner also objected to the abstract. The abstract has been amended. Pursuant to the aforementioned amendments, Applicants respectfully request that the Examiner's objections to the drawings and specification be withdrawn.

In the Office Action, claims 1-4 and 28-31 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Meyer (U.S. Patent No. 5,541,595) in view of Pollman (U.S. Patent No. 5,233,348). Claims 5-9 and 32-36 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Meyer in view of Pollman and further in view of Padovani (U.S. Patent No. 6,411,799). Claims 10-13 and 37 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Meyer in view of Pollman and further in view of Berger (US 2001/0012271). Claims 14-17 and 38 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Meyer in view of Pollman and further in view of Berger and Padovani. The Examiner's rejections are respectfully traversed.

To establish a *prima facie* case that the aforementioned invention is obvious, three basic criteria must be met. First, the prior art reference (or references when combined) must teach or suggest all the claim limitations. Second, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. The mere fact that the prior art

can be combined or modified does not make the resultant combination obvious unless the prior art also suggests the desirability of the combination. Third, there must be a reasonable expectation of success. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on Applicants' disclosure. Conclusory statements regarding common knowledge and common sense are insufficient to support a finding of obviousness.

With regard to claims 1 and 5, Applicants describe and claim, among other things, identifying at least a first plurality of messages indicative of a corresponding first plurality of data transmission rates and a second plurality of messages indicative of a corresponding second plurality of data transmission rates. With regard to claims 10, 14, and 37-38, Applicants describe and claim, among other things, identifying at least a first group of messages having a first plurality of transmit rate request messages and a second group of messages having a second plurality of transmit rate request messages.

Meyer is concerned with decoding compressed image data that has been encoded using a variable length encoding technique. The Examiner admits on page 5 of the Office Action that Meyer does not teach or suggest identifying at least a first and second plurality of messages based on a prior transmitted message and therefore relies on Pollman to teach sending a probability distribution prior to transmission of a message frame. The Examiner also admits at page 9 of the Office Action that neither Meyer nor Pollman teach or suggest that the first and second pluralities of messages are indicative of corresponding pluralities of data transmission rates or that the first and second groups of messages have a first and second plurality of transmit rate request messages, respectively.

The Examiner therefore relies on Berger to teach transmitting a data rate request signal that may be used to transmit data blocks in a network and alleges, without record support, that it would be obvious to combine the teachings of the cited references to arrive at Applicants' claimed invention. However, the cited references fail to provide any suggestion or motivation for combining the data rate request taught in Berger with the encoding technique taught in Meyer. In particular, there appears to be no suggestion or motivation in the cited references to combine the data rate request signal used to transmit data blocks in the network taught by Berger with the encoding method used in the image compression technique taught by Meyer.

Thus, Applicants respectfully submit that the cited references fail to provide any suggestion or motivation to modify the prior art to arrive at the invention set forth in claims 1-17 and 37-38. In particular, there is no suggestion or motivation for identifying at least a first plurality of messages indicative of a corresponding first plurality of data transmission rates and a second plurality of messages indicative of a corresponding second plurality of data transmission rates, as set forth in claims 1 and 5. Furthermore, Applicants submit that the cited references fail to provide any suggestion or motivation for identifying at least a first group of messages having a first plurality of transmit rate request messages and a second group of messages having a second plurality of transmit rate request messages, as set forth in claims 10, 14, and 37-38. In the absence of any suggestion or motivation in the cited references, Applicants respectfully submit that the Examiner's conclusory statements are insufficient to support a finding of obviousness and request that the Examiner's rejections of claims 1-17 and 37-38 under 35 U.S.C. § 103(a) be withdrawn.

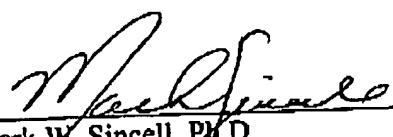
With regard to claims 28, 32, and 37-38 Applicants describe and claim, among other things, identifying at least a first and second plurality of messages based on a current system

state. The Examiner has cited no references and made no arguments that the cited references teach or suggest identifying at least a first and second plurality of messages based on a current system state. Applicants respectfully submit that none of the cited references appear to teach or suggest identifying at least a first and second plurality of messages based on a current system state. For at least this reason, Applicants respectfully submit that claims 28-38 are not obvious over the cited references and request that the Examiner's rejections of these claims be withdrawn.

For the aforementioned reasons, it is respectfully submitted that all claims pending in the present application are in condition for allowance. The Examiner is invited to contact the undersigned at (713) 934-4052 with any questions, comments or suggestions relating to the referenced patent application.

Respectfully submitted,

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